

11 U.S.C. § 362
11 U.S.C. § 524
Removal
Jurisdiction

James Jeffries v. Bar J Forest Products et al. 95-6037-fra
(In re James Jeffries 692-65238-fra7)

Samuel Jeffries v. Bar J Forest Products et al. 95-6036-fra
(In re Samuel Jeffries 692-65237-fra7)

11/15/95

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Published

The plaintiffs in the two cases filed complaints against Bar J Forest Products claiming that a civil case filed by Bar J in Douglas Co. Circuit Court against a number of defendants, including the two plaintiffs, violated 11 U.S.C. § 362 and/or § 524. They asked for damages and injunctive relief. The plaintiffs also claimed §§ 362 and 524 as affirmative defenses in the state court action. All parties filed motions for summary judgment.

The bankruptcy court determined that the state court has concurrent jurisdiction with the bankruptcy court to determine the applicability of §§ 362 and 524 with regard to cases filed in the state court. Had the plaintiffs desired to have the case heard in bankruptcy court, they should have filed a notice of removal. Since they did not do so, jurisdiction over the matter, including the issue of damages, still rests with the Douglas County Circuit Court. Both cases were dismissed for lack of jurisdiction.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)	
)	
JAMES W. JEFFRIES,)	Case No. 692-65238-fra7
)	
Debtor.)	
)	
JAMES W. JEFFRIES,)	
)	
Plaintiff,)	
v.)	Adversary No. 95-6037-fra
)	
BAR J. FOREST PRODUCTS, INC.)	
and CLAUD INGRAM,)	
)	
Defendants.)	

IN RE)	
)	
SAMUEL S. JEFFRIES,)	Case No. 692-65237-fra7
)	
Debtor.)	
)	
SAMUEL S. JEFFRIES,)	
)	
Plaintiff,)	
v.)	Adversary No. 95-6036-fra
)	
BAR J. FOREST PRODUCTS, INC.)	
and CLAUD INGRAM,)	
)	
Defendants.)	MEMORANDUM OPINION

1 The Court is confronted with motions for summary judgment
2 filed by both plaintiffs in the above cases and by defendants. For
3 the reasons that follow, both parties' motions will be denied and
4 the adversary proceedings dismissed.

5 Facts

6 A brief summary of the facts of these cases is as follows:

7 1. On 12/11/92, Samuel and James Jeffries filed Chapter 11
8 petitions in Bankruptcy Court.

9 2. On 5/3/93 a hearing was held, after which the two
10 bankruptcies were converted to Chapter 7.

11 3. On 4/16/94, the Bankruptcy Court granted Samuel Jeffries'
12 discharge.

13 4. On 12/13/94, Bar J. Forest Products ("Bar J") filed a
14 lawsuit in Douglas County Circuit Court against Michael, Mary Ann,
15 James, and Samuel Jeffries and Bill Mignot for replevin and for
16 monetary damages. In answer, James and Samuel answered by
17 affirmative defense on 2/3/95 that the plaintiff is enjoined by 11
18 U.S.C. § 362 and/or § 524 from pursuing the action against those
19 two defendants.
20

21 5. On 2/17/95, Samuel and James each filed adversary
22 proceedings in Bankruptcy Court against Bar J and Bar J's attorney,
23 Claud Ingram, alleging that Bar J's state court action is enjoined
24 pursuant to 11 U.S.C. § 362 and/or § 524. The complaint asks for
25 monetary damages and injunctive relief. Bar J answered with
26 various affirmative defenses and asked for sanctions.

6. On 3/9/95, the plaintiff in the state court action (Bar J) filed an amended complaint to the effect that all actions by the defendants (Jeffries et al.) which are the subject of the Douglas County Circuit Court complaint occurred between May 5, 1993 and December 1, 1994. The motion to file the amended complaint was objected to by the defendants in that action.

7. On 3/17/95, the Bankruptcy Court granted James Jeffries' discharge.

Discussion

1. Jurisdiction generally

Jurisdiction over a civil suit which arises under title 11 of the U.S. Code or arises in or is related to a bankruptcy case under title 11 is concurrent between state and federal courts under 28 U.S.C. § 1334. Relevant portions of that statute are as follows:

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11. [emphasis added].

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under Title 11 or arising in or related to a case under title 11.

While there may be a split of authority as to whether state courts have jurisdiction to determine applicability of the automatic stay, this court finds that the state courts have concurrent jurisdiction with bankruptcy courts to determine

1 applicability of the automatic stay under 11 U.S.C. § 362.¹ See,
2 In re Mann, 88 B.R. 427, 430 (Bankr. S.D. Florida 1988),
3 Commonwealth of Pennsylvania v. Ingram, et al., 658 A.2d 435, 437
4 (1995). State courts also have jurisdiction to determine whether
5 certain debts or causes of action have been discharged in
6 bankruptcy under 11 U.S.C. § 524. See, e.g., John Deere Co. v.
7 Epstein, 91 Or.App. 195, 755 P.2d 711 (1988), State of Oregon v.
8 Davis, 116 Or.App. 607, 843 P.2d 460 (1992), State of Oregon v.
9 Sprang, 1995 WL 628534 (Or.App. 10/25/95).

11 When a civil action related to a bankruptcy case is commenced
12 in state court in which concurrent jurisdiction exists with the
13 federal court, the defendant in that action may file a notice of
14 removal with the federal district court. 28 U.S.C. § 1452. In
15 Oregon, the notice of removal is automatically referred to the
16 bankruptcy court by the federal district court pursuant to standing
17 orders issued under 28 U.S.C. § 157(a). Until a notice of removal
18 is filed, however, jurisdiction over the matter rests with the
19 state court and does not attach to the federal court. 9 Collier on
20 Bankruptcy ¶ 9027.07 (15th ed.1995). See also, United States ex
21 rel. Walker v. Gunn, 511 F.2d 1024 (9th Cir. 1975), cert. denied,
22 423 U.S. 849, 96 S.Ct. 91 (1975) (in the context of the criminal
23 removal statute, an untimely petition leaves the federal court
24

25
26 ¹ Some courts have held that bankruptcy courts alone have
exclusive jurisdiction to determine applicability of the stay.
See, e.g., In re Raboin, 135 B.R. 682, 684 (Bankr. D. Kan. 1991),
Sermersheim v. Sermersheim, 97 B.R. 885, 888 (Bankr. N.D. Ohio
1989).

1 without jurisdiction to decide the merits). Fed. R. Bankr. P. 9027
2 governs removal in the bankruptcy context and reads in relevant
3 part as follows:

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8 Rule 9027. Removal

9 (a) Notice of Removal

10 . . .

11 (3) Time for Filing; Civil Action Initiated After
12 Commencement of the Case Under the Code. If a case
13 under the Code is pending when a claim or cause of
14 action is asserted in another court, a notice of
15 removal may be filed with the clerk only within the
16 shorter of (A) 30 days after receipt, through
17 service or otherwise, of a copy of the initial
pleading setting forth the claim or cause of action
sought to be removed or (B) 30 days after receipt
of the summons if the initial pleading has been
filed with the court but not served with the
summons.

18 2. Jurisdiction in this case

19 In the case at bar, Defendant Bar J filed its state court
20 civil action against the Plaintiffs in Douglas County Circuit
21 Court. Plaintiffs filed as an affirmative defense to the
22 Defendant's complaint that the Defendant is precluded from
23 prosecuting the action in state court by 11 U.S.C. § 362 and/or
24 524. At that point the state court had jurisdiction over the
25 matter pursuant to 11 U.S.C. § 1334 and could decide both the
26 substantive issues raised in the complaint and the merits of

1 Plaintiffs' affirmative defenses. Moreover, the state court is
2 empowered to decide any other issue arising under the Bankruptcy
3 Code implicated by the facts of the case. This includes the damage
4 claim made in this case.

5 Had Plaintiffs desired to have the matter heard in Bankruptcy
6 Court, they were free to file a notice of removal pursuant to Fed.
7 R. Bankr. P. 9027. Jurisdiction over the matter then would have
8 attached to the federal court. They did not do so. Instead, they
9 filed adversary proceedings, based on their state court affirmative
10 defenses, in Bankruptcy Court on 2/17/95, well after the time
11 allowed for filing a notice of removal. The federal court must
12 decide the same issues in the adversary proceedings as the state
13 court would in the state action; namely, are the claims asserted in
14 the Defendant's state court action barred from prosecution by 11
15 U.S.C. § 362 and/or 524. Plaintiffs chose their forum by failing
16 to file a notice of removal and asserting affirmative defenses in
17 state court relying on 11 U.S.C. § 362 and/or 524. The Bankruptcy
18 Court does not have jurisdiction to hear the matter.
19

20 Conclusion

21 The Bankruptcy Court lacks jurisdiction over the matters
22 raised in Plaintiffs' complaints as jurisdiction still rests with
23 the Douglas County Circuit Court. For that reason and under the
24 authority of 11 U.S.C. § 105(a), both motions for summary judgment
25 in each adversary proceeding are denied and both proceedings are
26 dismissed with neither party taking anything thereby.

1 An order consistent herewith will be entered.

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4 FRANK R. ALLEY
5 Bankruptcy Judge
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